United Nations S/PV.6377

Security Council

Sixty-fifth year

Provisional

6377th meeting

Tuesday, 7 September 2010, 10 a.m.

New York

President:	Mr. Apakan	(Turkey)
Members:	Austria	Mr. Ebner
	Bosnia and Herzegovina	Mr. Barbalić
	Brazil	Mrs. Viotti
	China	Mr. Wang Min
	France	Mr. Bonne
	Gabon	Mr. Issoze-Ngondet
	Japan	Mr. Nishida
	Lebanon	Mr. Salam
	Mexico	Mr. Heller
	Nigeria	Mr. Amieyeofori
	Russian Federation	Mr. Dolgov
	Uganda	Mr. Mugoya
	United Kingdom of Great Britain and Northern Ireland	Mr. Parham
	United States of America	Ms. Anderson

Agenda

Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)

Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process (S/2010/453)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

10-50627 (E)

Please recycle

The meeting was called to order at 10.05 a.m.

Expression of thanks to the retiring President

The President: As this is the first meeting of the Security Council for the month of September, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Mr. Vitaly Churkin, Permanent Representative of the Russian Federation to the United Nations, for his service as President of the Security Council for the month of August 2010. I am sure I speak for all members of the Council in expressing deep appreciation to Ambassador Churkin and his delegation for the diplomatic skill with which they conducted the Council's business last month.

Adoption of the agenda

The agenda was adopted.

Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920)

Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process (S/2010/453)

The President: I should like to inform the Council that I have received a letter from the representative of Nepal, in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the consideration of the item, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Acharya (Nepal) took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Karin Landgren, Representative of the Secretary-General and head of the United Nations Mission in Nepal.

There being no objection, it is so decided. I invite Ms. Landgren to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with its previous consultations.

I wish to draw the attention of Council members to document S/2010/453, which contains the report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process.

At this meeting, the Security Council will hear a briefing by Ms. Karin Landgren. I now give the floor to Ms. Landgren.

Ms. Landgren: The present report of the Secretary-General (S/2010/453) presents a discouraging picture of the state of Nepal's peace process and of the failure of the political parties to invest in its revival. The disagreement between the Government and the opposition over the continued role of the United Nations Mission in Nepal (UNMIN) in the peace process is also reported.

At the time of my most recent briefing to the Council (see S/PV.6308), Nepal was in the fourth day of a national strike called by the Unified Communist Party of Nepal-Maoist (UCPN-M) seeking to compel the resignation of Prime Minister Madhav Kumar Nepal. Party supporters thronged Kathmandu and other urban centres, raising fears of confrontation. After six days, the strike was called off and the demonstrators made an orderly retreat. Fresh national anxiety arose within weeks with the imminent expiry of the two-year tenure of the Constituent Assembly with the new constitution still far from complete. The country was on the brink of an uncertain and dangerous constitutional dilemma. After intensive negotiation and an eleventh-hour threat of revolt within the third-largest party, the Communist Party of Nepal (Unified Marxist-Leninist) (UML), all but five parliamentarians supported a year-long extension of the Assembly until 28 May 2011.

The three-point agreement that extended the Assembly also committed the parties to moving ahead in consensus and cooperation in the remaining tasks to bring the peace process to its logical conclusion, and clarified that the Prime Minister was ready to resign

without delay to pave the way for the formation of a national consensus Government.

This agreement averted a potential collapse of the peace process, but the critical extension of the deadline for completing the constitution has not moved matters forward. Since then, the Constituent Assembly has met only to adopt the calendar for constitution-drafting. Prime Minister Nepal stepped down on 30 June, but continues to head a caretaker Government pending the election of a new Prime Minister by the Legislature-Parliament. Negotiations to form a national consensus government failed, and the Legislature-Parliament has voted seven times since 21 July on two candidates: Maoist former Prime Minister Pushpa Kamal Dahal "Prachanda", and Nepali Congress parliamentary party leader Ram Chandra Poudel. The Maoists have obtained a high of 259 votes, some 42 short of a simple majority, while Nepali Congress has reached a maximum of 124 votes. An eighth round is tentatively scheduled for 26 September.

A primary reason for the deadlock is the UML decision to remain neutral in the balloting, which is at least in part a result of internal party tensions. Its Chairman Jhalanath Khanal has put forward a consensus platform grouping the major issues to be resolved for the sake of the peace process. The Madheshi coalition, despite strains, has also stayed largely neutral, and the withholding of roughly 190 votes by these two blocs has prevented both contenders from garnering a majority.

There is widespread acknowledgement in principle that a majority Government that leaves any of the three major parties in opposition is unlikely to muster the unity needed to see through the most difficult outstanding peace process commitments. Unfinished constitutional business includes reaching agreement on the form of governance, the judiciary and State restructuring. The State restructuring commission foreseen by the Comprehensive Peace Agreement was to have begun its work by the end of July, but has not done so. Madheshi parties in particular wish to see State restructuring addressed by the relevant committee of the Constituent Assembly.

The study committee charged with making recommendations on seven of the eight remaining thematic papers did not present its report as scheduled. Despite plans to present the first draft of the new constitution in November, there are doubts that this timetable can be kept. But the prospect of forming a consensus Government remains equally, if not more remote.

As the three-point agreement of late May makes explicit, the issues of power-sharing, completion of the new constitution and solutions for the former Maoist army personnel are now interlinked. All three also form part of the proposed UML consensus platform, but this proposal has received little attention from other party leaders. The current void in the peace process illustrates a long-standing reluctance to invest in the kind of sustained and structured negotiations that might drive progress. The proper architecture for this was never put in place, and the once-promising high-level political mechanism was abandoned not long after the death of Girija Prasad Koirala in March.

It is not too late to establish a clear and dependable discussion mechanism with which the parties can also firmly put to rest any fears that they will abandon the path of the constitution and democracy, and demonstrate a new seriousness towards resolving outstanding issues.

The commitments that were made in the Comprehensive Peace Agreement, the Interim Constitution and other auxiliary agreements formed the negotiated basis for ending Nepal's 10-year war and for responding to Nepal's historically marginalized groups, including Madheshi, indigenous and Dalit populations. These commitments include the integration into the security forces or the social rehabilitation of the Maoist army personnel, who were to be supervised by a special committee, and the democratization of the Nepal Army, defined as the determination of its appropriate size, the development of its democratic structure and national and inclusive character, and training imparted in accordance with the norms and values of democracy and human rights.

Pending the implementation of these forward-looking commitments, the Nepal Army and the Maoist army were made subject to restrictions in order, pursuant to article 4 of the Comprehensive Peace Agreement,

> "to hold the election to (the) constituent assembly in (a) free and fair manner and for the democratic restructuring of the army to proceed".

The parties negotiated the specifics of these mutual restrictions, under which the Maoist army is

cantoned in 28 sites across Nepal and the Nepal Army is confined to barracks other than for a number of routine functions. The storage and monitoring by UNMIN of Maoist army weapons and an equivalent number of Nepal Army weapons were also negotiated between the parties. These weapons still belong to their respective armies, which retain the keys to the arms storage containers, which are under 24-hour UNMIN surveillance. The barracks, cantonments and activities of the Maoist army and the Nepal Army are lightly monitored by the modest UNMIN contingent of unarmed arms monitors, and each army remains under its own chain of command.

In recent months, the caretaker Government, sections of the Nepali Congress and the UML, and the Nepal Army have argued that the Nepal Army should no longer be monitored by UNMIN, citing a provision of the Comprehensive Peace Agreement according to which "the concept of two sides shall cease to exist" upon the establishment of the interim Legislature-Parliament — a development that took place in January 2007.

Whether or not two sides still exist, there are manifestly still two armies. The restrictions on the armies were to be transitional and, as Council members are aware, the Secretary-General has repeatedly argued against the prolonged confinement of the two armies without a long-term solution, calling for early decisions to be addressed in the context of the longer-term reform of the security sector. The changes foreseen to the armies under the Comprehensive Peace Agreement have not taken place.

It is cause for concern that the Nepal Army now seeks unilaterally to withdraw from and to alter the scope of the Agreement on the Monitoring of the Management of Arms and Armies. The arms monitoring agreement contains provisions whereby the parties can review or modify it. The Government and the Army have not sought to use this modality. Any unilateral decision in this regard may have the effect of abrogating the treaty.

These developments have direct and immediate bearing on the work of UNMIN. UNMIN's monitoring of arms and armies and chairmanship of the Joint Monitoring Coordination Committee (JMCC) are set out in the Arms Monitoring Agreement itself. UNMIN monitors strictly at the invitation of the parties, and with their agreement. Absent a fresh agreement between the parties, UNMIN cannot continue to monitor one side at the request of the other; neither does it have the authority to introduce fundamental changes to the monitoring regime.

The Government's pressure for an end to the international monitoring of the Nepal Army has been accompanied by a flood of criticism directed at UNMIN. A Nepal Army internal document, entitled "The basis for UNMIN's exit", which has been leaked to the press, asserts that UNMIN is siding with the Maoists, is not impartial and is obstructing the Nepal Army and the Nepal Government in fulfilling their national duty. The Chief of Army Staff has been visible and vocal in lobbying the political leadership and diplomatic representatives for UNMIN's departure. This activism by the Army on issues within the political sphere seems, however, to have been encouraged by some senior political leaders, with the Defence Minister publicly accusing UNMIN of being the mouthpiece of the Maoists. UNMIN has protested the Army's impugning of the integrity of the United Nations. The caretaker Government has yet to repudiate the actions or remarks of its army and its ministers.

As has been reported to the Council in the past, the Nepal Army has since 2007 continued to recruit personnel in defiance of the arms monitoring agreement and bypassing the JMCC. Reports of recruitment by the Nepal Army and by the Maoist army have been brought to the JMCC for discussion and review, as is appropriate. The Nepal Army has now refused to accept any future discussion of its recruitment in the JMCC, and has said it will not take part in JMCC meetings if this issue is on the agenda. Seeking to restrict discussion in the designated forum — the JMCC — undermines the agreed arms monitoring regime.

As recently as May, the Nepal Army had sought to expand the work of the JMCC to cover the activities of the Maoists' Young Communist League, sending four letters of protest in that regard. The JMCC has never reviewed actions by or on behalf of entities other than the Nepal Army and the Maoist army. Soon afterwards, records of confidential JMCC proceedings were leaked to the press, as were the names of all 19,602 Maoists registered and verified in the cantonment sites in 2007.

Let me emphasize that the true risks of this moment pertain less to UNMIN than to the gulf of mistrust between the parties that has paralysed the political process. Along with this has come significant distortion of Nepal's comparatively successful arms monitoring regime and unfounded allegations of UNMIN bias. These include two matters perpetually recycled as evidence of UNMIN monitoring failures, on which I would like to set the record straight. One is the claim that UNMIN neither prevented nor reacted to the torture and murder, in May 2008 in the Shaktikhor cantonment, of businessman Ram Hari Shrestha by Maoist army personnel. The other is the allegation that UNMIN intervened to prevent justice being done in August 2009, when 19 Maoist army personnel were found in Kapilvastu in possession of nine United Nations-registered perimeter weapons.

Both of these incidents were serious breaches of the Arms Monitoring Agreement. As the record shows, UNMIN condemned both immediately, issued press releases underlining the Mission's concerns and also conveyed these messages strongly in private. Both cases were brought to the JMCC, along with UNMIN's findings, and were unanimously found to be violations. UNMIN has repeatedly called for those involved in ordering and carrying out the abduction and killing of Ram Hari Shrestha to be brought to justice. In Kapilvastu, UNMIN went immediately to the site to identify the weapons. Following the engagement of senior Government officials, the matter was brought to a peaceful resolution and agreed steps were taken, including the return of the weapons to the cantonment.

UNMIN does not control or enforce Maoist army or Nepal Army movements. As has been reported to the Council, UNMIN has pressed both armies, since last year, for greater cooperation in the monitoring of troop strength. Doubts that Maoists were exceeding the agreed 12 per cent rate of absence in the cantonment sites led the Government to halt payments to them earlier this year. Following discussions between the Peace Ministry and the UCPN-M, payments resumed and the minister expressed his satisfaction. UNMIN has, however, continued to raise concerns in that regard and has recently agreed with the UCPN-M that arms monitors will conduct a fresh head count in the cantonments in the near future.

UNMIN's aim is to complete our support to the peace process effectively and wind up our presence with minimal disruption to that process. Since March, UNMIN has actively explored how best to do so, in extensive consultation with senior leaders of the three main parties. As the Secretary-General has now reported twice, the parties have consistently maintained to us that the handover of monitoring responsibilities would be premature and that there is no mechanism to take over this responsibility. In the present polarised climate, a national monitoring mechanism can expect to find its credibility challenged even more severely than that of UNMIN.

In the absence of credible monitoring alternatives, UNMIN has continued to encourage the parties to focus on reaching an agreement on integration and rehabilitation and related commitments so that the need for monitoring the armies could end. In the meantime it has also continued to press for improving the effectiveness of its monitoring role. The Nepali Congress, the UML and the UCPN-M have all presented proposals on integration and rehabilitation, and agree that three options are open to Maoist army personnel: voluntary separation, integration into the security forces and rehabilitation. The parties' elaboration of proposals is useful, but they remain far apart on the numbers to be integrated as well as on the modalities of integration. In common with many past agreements, these too rely heavily on a minimum level of trust, consensus and goodwill as a modality for moving forward. The Special Committee met on 5 September, however with Maoist participation for the first time in many months.

Our counterparts had identified support to the Special Committee, including on the planning and implementation of integration and rehabilitation, as an area where UNMIN could be of greater assistance. Consistent also with the Council's calls for a timeline on this issue, we shared a non-paper on this with senior party representatives as a way of encouraging forward thinking. As the Secretary-General's report notes, this placed along a hypothetical timeline the technical elements broadly agreed among the parties and in the Technical Committee. Based principally on advice from Nepali experts and on the experience of the discharge of the disqualified Maoist army personnel earlier this year, it posited the reinforcement of Government implementing institutions, notably a secretariat to the Special Committee; in-cantonment consultations, briefing, registration and choices by personnel; separation into groups; the detailed plan for integration following political agreement on entry

norms, rank harmonization and so on; and final briefings on choices. Discharge would follow at the end of week 39. This was a non-prescriptive effort to stimulate reflection and technical planning. The Prime Minister, however, declared that UNMIN had stepped beyond its jurisdiction. UNMIN has continued to press for interim actions, including profiling in the cantonments and a labour market survey.

The recent direct challenge to the Arms Monitoring Agreement takes the peace process in a sharply wrong direction. Risks to the peace process and to democratic governance in Nepal are real. The risks include an unresolved leadership battle, which may keep critical decisions in limbo and, at this point, appears unlikely to deliver the consensus Government that would form a stronger basis for concluding the peace process. They include the risk that the Constituent Assembly, even after a 12-month extension, will expire without a new constitution having been drafted. They also include a climate in the country of deteriorating security. In late July, the Government decided to give special protection to village development committee secretaries across the country, after more than 1,200 secretaries in 31 districts tendered a collective resignation, citing insecurity. The risks include threats to journalistic independence, with killings of media personnel earlier in the year followed by death threats to senior editors and other acute constraints on their operations and reporting. They include a contested end to the monitoring of arms and armies, with unpredictable consequences.

The biggest risk of all may be that the peace process and parliamentary processes appear discredited, sending a discouraging signal to existing and emerging groups about taking the democratic route to push for change. UNMIN's tasks can succeed only if there is overall political progress in Nepal. Its role is supportive. Ascribing to the United Nations the blame for the parties' failure to move forward politically is not a new phenomenon, but it has grown incrementally and in intensity. The hard political decisions needed to take Nepal's peace process forward are beyond UNMIN's mandate and capacity, and lie firmly in the hands of Nepal's political leaders.

As the report of the Secretary-General indicates, some things need to change if the peace process is to be brought to a successful end. With respect to UNMIN, it is proposed that in the first instance the mandate be discussed with a new, duly formed Government, in the context of the parties' fulfilment of their commitments and the phasing-out of the Mission. The Secretary-General would then report back to the Council, and in the event of there being neither clarity nor consensus in this regard, would propose alternative measures, including the possible termination of the mandate.

I would like once again to make clear that the desire of the Secretary-General is to see the Mission complete its tasks and withdraw in a manner that does not jeopardize the peace process and maintains continued international support for peace consolidation. The United Nations has no interest in or desire to prolong the life of the Mission by a day more than necessary.

Nepal's peace process has not failed, even though it has moved far more slowly and unevenly than anticipated by either the parties or the Council. The original ambitious timelines have not been maintained on any count, and this is likely to be a protracted endeavour. For well over a year now, the process has essentially stalled and the level of mistrust has risen. The process can be brought back on track if the political leadership is ready to reassess priorities and place this process at the front and centre of its political activity, recognizing that only through continued and persistent negotiation can it move forward. At a time when political moderation is in short supply, the parties have a great deal of work to do in order to make the case that they intend Nepal's peace to be permanent and irreversible.

The President: I thank Ms. Landgren for her briefing. I now give the floor to the representative of Nepal.

Mr. Acharya (Nepal): I wish to congratulate you, Ambassador Apakan, on assuming the presidency of the Council for the month of September. I would like to extend my sincere thanks to you for providing me with this opportunity to speak before the Council.

I would also like to thank Ms. Karin Landgren, the Representative of the Secretary-General, for her briefing, although we hold different views on various issues she has presented here, including the role of the national Army. We do not accept the sweeping critical comments levelled at the national Army as trying to scuttle the process. They are not true; as Ms. Landgren

herself has said, they are based on perverted "non-papers".

As the Council is aware, Nepal has passed many milestones in its peace process while moving forward towards sustainable peace, stability and development since the signing of the Comprehensive Peace Accord in November 2006. The promulgation of the Interim Constitution on a consensual basis, the successful elections for the Constituent Assembly and the declaration of Nepal as a federal democratic republic were indeed some of the historic steps made possible by a conscious understanding among the political parties and by wide support from the general public.

It is true that our transition from conflict to a lasting peace has been arduous, as it is everywhere else. But what is equally true is that we are transforming our entire political disposition from unitary to federal and monarchical to republican, and making the structure and mechanisms of our governance more democratic, inclusive and accountable. These transformations will have far-reaching effects, and as such are not straightforward tasks by any measure. Rather, the processes require assiduous negotiations, confidence-building measures and public understanding in order to bolster the new set-up and the sharing of power among all stakeholders. We all look forward to the successful conclusion of the peace process as soon as possible so that we can ensure further peace, stability and sustainable, rapid economic progress in the country. The people of Nepal look forward eagerly to completing the transition to a normally developing State as early as possible.

At this juncture, while the Constituent Assembly, with its extension, has the task of writing a new constitution in time, it is also engaged in the process of forming a new Government — a democratic exercise that it has to fulfil in its capacity as the legislative Parliament as well. We are aware that the current stalemate should not affect or delay the process of writing the constitution. We have therefore all been making efforts to complete the new Government-formation process from within the Constituent Assembly as soon as possible. We are hopeful that it will ultimately bring the political parties to further negotiations, resulting in the formation of the new Government soon. This will then allow the Government and political parties to focus their efforts on consolidating the peace process by taking care of the remaining tasks related to it, including the integration and rehabilitation of combatants and the writing of the new Constitution.

The Government and the people of Nepal express their gratitude to the United Nations for having provided continued support since the beginning of our peace process. The United Nations Mission in Nepal (UNMIN) has witnessed and participated in many phases of our political events and the peace process throughout the successive renewals of its mandate.

I would also like to thank Secretary-General Ban Ki-moon for his keen personal interest in the success of the peace process in Nepal. We have taken note of the Secretary-General's report on UNMIN contained in document S/2010/453. I have the honour to state the views of the Government of Nepal on some aspects of the report, as follows.

We would have liked to see the report more balanced, nuanced and reflective of the correct assessment of the situation on the ground in its entirety. It is important that we have a well-rounded view of the situation based on accurate assessments.

The Government of Nepal has been working hard since the early days of the peace process to push it forward and thus move from the transition phase to normal statehood as soon as possible. It has also called for the cooperation of all concerned and expressed its utmost commitment to flexibility in promoting the peace process and accelerating the constitution-building process in the Constituent Assembly. Appropriate recognition of those efforts in the report could have helped provide a balanced view of the situation.

In paragraphs 2 and 4, and in various other places, the report should have better reflected the realities on the ground. With the elections to the Constituent Assembly and the formation of the Special Committee, the concept of the two armies no longer exists. The Maoist combatants should therefore be consistently referred to as such throughout the report. A national Army cannot be equated with the combatants.

In paragraphs 6 and 29, the report refers to the non-paper that UNMIN circulated in Nepal. The non-paper created a lot of confusion in Nepal, as it suggested an action plan that went well beyond the constitution-drafting timeline and created unnecessary

political complications. At formal meetings called by the Prime Minister soon after, the political parties represented in the Constituent Assembly categorically disowned the non-paper.

Paragraph 9 of the report refers only to the 16-week Action Plan submitted by the Prime Minister. In fact, the Prime Minister and the Special Committee prepared a 16-week Action Plan initially; as the situation evolved, a 60-day plan was also prepared to take care of the issue of integration and rehabilitation. That shows the Government's utmost commitment to accelerating the task of integrating and rehabilitating the combatants, and should also have been reflected in the report.

Paragraph 31 of the report does not discuss the Government's commitment and work towards democratizing the Nepal Army. It fails to mention the Cabinet committee headed by the Defence Minister, which has already prepared a detailed action plan on the democratization of the national Army. The action plan has been submitted to the Cabinet and is already under its active consideration.

The Government of Nepal takes exception to the questioning, in paragraph 34 of the report, of the regular functioning of the Government with full authority as per the Constitution of Nepal. The Government fully understands that the fundamental principles of the Charter of the United Nations respect the national sovereignty of each nation State and its political system as per its own Constitution.

In conclusion, the Government of Nepal reaffirms its firm commitment to the purposes and principles of the Charter of the United Nations and looks forward to contributing, as ever, towards fulfilling the Organization's mandate to maintain international peace and security and to promoting economic development, social progress and fundamental human rights. We will do so with the continued understanding and support of the international community for an early, meaningful and positive conclusion of the country's peace process in the best interests of the nation and its people.

It is for these reasons that I have just forwarded a request from the Government of Nepal, from the Prime Minister, through a letter to the Secretary-General for the extension of UNMIN, with appropriate focus as reflected in the letter. The letter sets out in detail the progress that has been made, or the lack of progress and the challenges that we face, as well as the reasons behind the request for an extension of UNMIN with appropriate focus.

We highly honour and value the sustained support and cooperation of the Security Council in our peace process. We feel privileged to receive the continued support and goodwill of the international community. We are confident that, with the Council's support and cooperation, we will succeed in taking our peace process to its logical end.

The President: I thank the representative of Nepal for his statement.

There are no further speakers inscribed on my list. In accordance with the understanding reached in the Council's prior consultations, I now invite Council members to informal consultations to continue our discussion of the subject.

The meeting rose at 10.40 a.m.